

March 5, 2012

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson:

We understand through several Alaska Native organizations that you are considering an administrative request under Section 404(c) of the Clean Water Act that would preempt possible creation of a mining project in Alaska. While that mineral exploration is on State lands designated for mining, it would, if developed, have some fairly substantial benefits favoring Native Alaskan organizations with land interests along transportation corridors that would service the mine.

A number of Alaska Native organizations have contacted us expressing their concern with this premature action by the Environmental Protection Agency (EPA). Due to a narrow economic base, many of the communities in the affected region have not seen vast economic opportunity. As a result, these organizations desire to have the chance to evaluate the opportunity for mine-related work that EPA's action would bar.

So far, these organizations have not necessarily articulated a position on the construction of a mine in their region. Rather, in contrast to EPA, they have taken a reasoned approach and tell us will evaluate possible mining opportunities when they are fully presented. In so doing, interested stakeholders will be able to gather information about the potential impacts of a particular mining plan, the potential mitigation, the potential economic effects, and the true risks of mining development near their communities. Importantly, they will be able to then best understand what effects there may be on the fish and fisheries that they rely on.

While not all of us have always embraced interpretations of the National Environmental Policy Act (NEPA), a complex situation such as the possible mining project in Alaska is something that NEPA may be better able to balance. In contrast to a NEPA based approach, the EPA is responding to a 404(c) petition by collecting information that can justify outcomes sought in the petition. As a result, this puts the agency in an awkward, biased position by being the researcher of fact, finder of fact, and the judge, while the agency also seeks to rush a decision on a petition that splits the Alaska Native community. This is a reckless approach and one that does not consider the much needed economic diversification for some Native communities and interests closest to the potential mine development.

In closing, issues that EPA is now addressing outside of NEPA could severely diminish the economic value of land owned by Native Alaska Village corporations. We

urge you to reconsider EPA's current course of action by allowing the NEPA process to start, should there be a permit for mining activities requested.

Pebble Project and Section 404(c) of the Clean Water Act  
January 2012

The Pebble Project located in Southwest Alaska, is investigating one of the largest deposits of copper, gold, molybdenum and silver in the world. The Pebble Partnership (Anglo American, PLC, and Northern Dynasty Mines) is exploring this mineral deposit on State of Alaska lands that are available for mining. (<http://www.pebblepartnership.com/home>)

The project is in the pre-permitting stage and working to complete a pre-feasibility study. Extensive environmental and engineering studies have been conducted to prepare a responsible development plan for the mineral resource at Pebble. To date, over \$400 million has been invested by the partners in activities that include research, studies and field work in order to best understand the fish, wildlife, geology and other resources in the area. The studies will facilitate configuring the mine so that the standards for more than 60 different types of state and federal permits, certifications, and reviews that are needed can be met. The project should be ready for permitting in late 2012 or early 2013.

If permits are applied for and granted, capital costs to build out the mine will be several billion dollars. About 2000 jobs are projected for mine construction that will likely last three or more years. Another 1000 ongoing skilled mining jobs (averaging \$75,000-\$95,000 per year each) will be provided over the life of the mine. These jobs will be available for Native Alaskans and others living in rural areas where the traditional economic outlook is bleak and unemployment rates are very high and to other qualified individuals.

However, in May 2010 some opponents of mining in the area of the Pebble Project proposed to the EPA that the agency preemptively prohibit, under Section 404(c) of the Clean Water Act, deposit of fill material related to “metallic sulfide mining” for a “potential Pebble mine” into wetlands in two drainages totaling 20,000 square miles near the mine site area. This would “veto” or deny, in advance, an essential federal wetlands permit for the Pebble mine, even before a mine design, plan and permit application is submitted by Pebble.

This preemptive veto petition and consideration of it is without precedent and inconsistent with traditional use of Clean Water Act section 404 authority by the EPA. The request for 404(c) action by EPA comes before mining permit submittal by Pebble and before full NEPA review. In response and in an unprecedented move, Pebble fulfilled a longtime promise to release its \$120 million environmental baseline studies document (EBD) to EPA, but it did so earlier than promised. The EBD was released in December 2011. Ordinarily, this scientific work would be used to best plan a mine compatible with the surrounding fish, wildlife, and habitat and guide a reasoned discussion about permitting decisions and mitigation in the NEPA process, a step yet to be completed.

EPA, having undertaken the 404(c) review and watershed assessment, has undercut the ability of The Pebble Partnership to get full and fair consideration of its permits and a thoughtful

mine plan that it is developing to comply with all state and federal environmental laws. This *prospective* 404(c) review is not only be costly and time consuming for EPA, it is unfair to a company that has made such a substantial investment and made commitments that its plan will meet federal and state standards to protect fish, wildlife and the environment. If a 404(c) preemptive veto or similar actions are granted by the EPA, it will stifle more investment in and attendant jobs from mining projects nationwide. That is, preemptive use 404(c) would become the weapon of choice to stop large projects in all sectors, projects that are quite needed now for private sector job creation.

EPA's logical and justified course should be to reject the petition outright as it lacks any meaningful substantive basis on its face. Instead of doing this, within a few weeks of receiving the petition, Administrator Jackson and others at EPA traveled to the epicenter of Pebble opposition and held meetings about the project thereby receiving a skewed view of "community opposition." The Administrator did meet with the company officials briefly in Anchorage during that visit, but the pending 404(c) petition was kept secret and not shared with the company at that point in time. There are many people in the rural part of Alaska where the mine would be located who want the permitting process for Pebble to proceed.

Alaska's governor, Sean Parnell, wrote in strong opposition to the preemptive 404(c) review by EPA noting that the lands on which Pebble would be located are State of Alaska lands that were selected for mining development and have been designated for mineral activities under the borough land plans for years. The governor directly asked for the Administrator to decline the petition.

Interestingly, the Pebble Partnership has made many unique commitments to protect the deposit area while exploring and to not go forward if the mine cannot be constructed in a manner that meets stringent environmental standards and protects the fishery. The partnership took the unprecedented step of undertaking a significant stakeholder engagement program conducted by the Keystone Center. Their corporate philosophy is that the company will respect and coexist with healthy fish, wildlife and other natural resources in Southwest Alaska and rely on the best science to plan and operate the mine.

For the nation, the mine would be a reliable source of US-derived copper, a strategic mineral that is vital to the US economy and touches daily life of everyone. Indeed, the green economy including wind turbines, electric vehicles, hybrid vehicles, electrical transmission, solar power generation, and computer technologies depend on supplies of copper. Pebble will also produce molybdenum an important metal used to make steel for rifle barrels, bicycles, ski equipment, light bulbs, food handling equipment, chemical processing equipment, machines, gas turbines, automotive parts and even ski wax.

The partnership simply wishes to have "due process" and fair treatment in the permitting system as there is substantial time, energy, funding and effort that has gone into planning and designing this modern, world-class mine. Preemptive 404(c) review and the decision to undertake a substantial watershed assessment as a basis to block the project is an extra-

procedural, unfair undertaking that would compromise full and fair review of the permit and plan that may be submitted by the partnership. It should be rejected by the EPA.

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